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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re M.L., et al., Persons Coming Under
the Juvenile Court Law.

B215094
(Los Angeles County
Super. Ct. No. CK72736)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Terry Troung, Juvenile Court Referee. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, James M. Owens, Assistant County Counsel and Timothy M. O’Crowley, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

At the six-month review hearing in this juvenile dependency case, the court modified the reunification plan of appellant S.L. (father) by ordering him to participate in a domestic violence counseling program, and denied his request for a continuance of the hearing to contest the additional required program. On appeal, father contends that the denial of his request constituted an abuse of the juvenile court's discretion and impaired his right to effective assistance of counsel. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2008, the Los Angeles County Department of Children and Family Services (department) filed a petition pursuant to Welfare and Institutions Code¹ section 300 on behalf of father's five children—M.L. (age 13), V.L. (age 12), J.L. (age 10), S.L. (age 7) and T.L. (age 5).² The amended petition alleged that: Father and the children's mother, who were not married, had a history of domestic violence in the presence of the children, including father having physically struck the mother; father had physically abused V.L. and J.L.; father viewed pornography on the Internet in the children's presence; and father inappropriately disciplined the children, including forcing them to do 100 jumping jacks and to perform excessive chores, which caused at least one child to suffer depression and anxiety and to engage in self-mutilation. The amended petition also alleged that the children's mother was aware of father's behavior and failed to take action to protect the children.

At the detention hearing, the court ordered the children released to their mother, granted father monitored visits, and ordered family reunification services to include domestic violence counseling, individual counseling and parenting education. In a jurisdiction/disposition report filed a month later, the department reported that father had

¹ All statutory references shall be to the Welfare and Institutions Code, unless otherwise specified.

² The petition was also filed on behalf of two older half-siblings, who are not father's biological children and who are not subjects of this appeal.

stated that he had commenced individual counseling, but the social worker was unable to verify his statement. Father denied having engaged in domestic or physical violence or watching pornography in front of the children. He admitted that he disciplined the children by having them perform exercises and chores, but he did not think his punishments were excessive.

After the parents stipulated to the amended petition at the adjudication hearing in June 2008, the court conducted the disposition hearing the following month and ordered father to attend parent education, couple's counseling with the children's mother and family counseling. The court also allowed father to have unmonitored visits with the children and to care for them while their mother was working.

For the first of two progress hearings set for August 2008, the department reported that the social worker was "extremely concerned about the reports of the father's verbally and emotionally abusive behavior during the unmonitored visits and the mother and children's expresse[d] fear of their father." In an interim review report, the department reported that father and the mother were in couple's counseling and had attended four parenting classes and that father was attending individual counseling. When the social worker met with father in person, he blamed the children's mother and her two older sons for the family's problems, and repeatedly stated that he did not know that making children do jumping jacks as punishment was wrong. The social worker remained concerned about father's lack of progress in acknowledging his responsibility for the family's problems, and noted that two different therapeutic professionals had expressed concerns about the children's safety and well-being in the home and while around father. The department recommended that the children remain placed with their mother and that father continue living outside the family home and continue reunification services. The court continued the first progress hearing to address father's visitation with the children.

For the second progress hearing, the department recommended that father's visits with the children be monitored, and submitted a letter to the court from one of the children's therapists making the same recommendation. The letter stated that the children reported being monitored by father via multiple two-way surveillance cameras in

the home; father used to torture the family pets in front of the children in order to intimidate them; father made the children stand in physically awkward positions and would hit them if they could not hold the stance; father coached the children on what to say to the social worker and therapists; and father used the children to spy on their mother while she was working, causing her to have to change jobs on multiple occasions. At the second progress hearing on August 26, 2008, the court stated that it found the therapist's letter to be "very disturbing," and ordered that father's visits with the children be changed from unmonitored to monitored.

The six-month review hearing was originally scheduled for January 8, 2009. In preparation for the hearing, the department submitted a last minute information report stating that father was continuing to have unmonitored visits with the children, despite the court's order that the visits be monitored. The couple's therapist who was working with father and the mother was not addressing issues of domestic violence because both father and the mother denied any problems with domestic violence. The department recommended that father be ordered to complete a probation department-approved batterers' intervention program.

In a status review report for the January 8, 2009 hearing, the department reported that father was making progress toward completing individual and couple's counseling and his parenting classes, but that he continued to deny any domestic or physical violence and did not take responsibility for his behavior and the consequences to his family. Father continued to blame the department's involvement on the fact that he made the children perform jumping jacks. The department recommended that father be given six more months of reunification services, in addition to participating in domestic violence counseling for batterers. The court continued the six-month review hearing to February 5, 2009.

For the February hearing, the department's interim review report stated that father's individual and couple's therapists stated that father had not been addressing domestic violence because father continued to deny any problems with domestic violence. The department submitted a joint report from the children's individual

therapists, which stated that the children were exhibiting “significant psychological distress,” and that the trauma they were experiencing as a result of their chronic exposure to a domestically violent household was manifesting in “emotional, behavioral, social and physical disturbances detrimentally affecting their development and functioning.” The therapists’ report stated that the children’s prognosis was guarded “due to the ongoing nature of abuse,” that father “continues to deny spousal or child abuse,” and that there was evidence that “the children have been systematically manipulated, intimidated and coached to defend the father and express their desire to have him returned to the home.” The department recommended that father be ordered to participate in and complete the following additional programs: a 52-week batterer’s intervention program from the probation-approved list; a 52-week parenting class for physical child abusers; individual therapy with a licensed therapist who specialized in “rageaholic behaviors”; and a “sexholic” anonymous or sex addicts anonymous weekly support group.

At the six-month review hearing on February 5, 2009, father’s attorney objected to the department’s recommendation that father participate in additional programs, and requested a continuance “to contest the further recommendation for these programs.” The court denied the request. The court then ordered the following: Father was to complete the original case plan of parenting education, family counseling and couple’s counseling; father was to continue with his individual counseling, which was now a court-ordered program; and in addition he was to participate in a domestic violence counseling program. This appeal followed.

DISCUSSION

Father contends that the juvenile court’s denial of his request for a continuance of the six-month review hearing to contest the additional court-ordered reunification service constituted an abuse of the court’s discretion and impaired his right to effective assistance of counsel. We disagree.

Section 352 provides that a juvenile court “may continue any hearing . . . beyond the time limit within which the hearing is otherwise required to be held, provided that no

continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a).) "Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (*Ibid.*) Section 352 further provides that "written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (§ 352, subd. (a).)

"[T]ime is of the essence in offering permanent planning for dependent children.'" (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) Thus, continuances in dependency cases "should be difficult to obtain." (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) "A reviewing court will reverse an order denying a continuance only upon a showing of an abuse of discretion." (*In re Gerald J., supra*, at p. 1187.) An abuse of discretion is shown when the trial court has made "an arbitrary, capricious, or patently absurd determination." (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.)

Here, the department had been seeking the addition of a domestic violence program to father's case plan since January 8, 2009. Yet, father did not give any written notice of a motion for continuance at any time before the continued February 5, 2009 hearing. Nor did he show good cause for an oral motion, or otherwise show good cause for a continuance at all. Father nevertheless argues that granting the continuance would not have been contrary to the best interests of the children because they were living with their mother and not in a temporary placement, and because they wanted him to return home. But father ignores the evidence showing that the children's therapists believed that his abusive behavior was causing the children significant psychological distress and detrimentally affecting their development and functioning, and the evidence that he was

continuing to deny spousal and child abuse. In short, a continuance was not in the children's best interests.

Nor has father demonstrated any prejudice from the juvenile court's denial of his request for a continuance. Father acknowledges that section 366.21, subdivision (e) provides that at the six-month review hearing, the court "where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian," and that California Rules of Court, rule 5.710(f)(11) provides that if the child is not returned at the six-month review hearing and the court does not set a section 366.26 hearing, "then the court must order that any reunification services previously ordered will continue to be offered to the parent or guardian, and the court may modify those services as appropriate."

Father claims that he was already participating in services that would address domestic violence. He points to the department's January 8, 2009 status review report, which attached a progress letter from his individual therapist stating that father's five counseling sessions had focused on "his interaction with his 5 children, his mood, domestic violence and anger management." But the department's report noted that the only goals addressed in the progress letter included "returning to work, regaining custody of his children and providing for his family," and that the letter did "not state any goals to stop the domestic violence in his relationship and to stop emotional abuse of his children and the mother of his children." Additionally, the department's subsequent February 5, 2009 interim review report stated that father's individual and couple's therapists had informed the social worker that father had not been addressing domestic violence because he continued to deny any problems with domestic violence. Although father's individual therapist agreed to bring up again the issue of domestic violence, he informed the social worker that if father continued to deny any domestic violence, there was not much the therapist could do about it. Thus, it is not reasonably likely that the outcome of the six-month review hearing would have been any different had a continuance been granted.

Moreover, father has not demonstrated how he was denied effective assistance of counsel. He asserts that his individual and couple's therapists "*may* have had favorable

evidence” and that his trial counsel “*could* have presented evidence that would have disfavored an additional, and possibly lengthy, component of his case plan.” (Italics added.) Not only is this pure speculation, but father points to no place in the record where the court denied his attorney the opportunity to present evidence or call witnesses on his behalf.

There was no abuse of discretion in the juvenile court’s denial of father’s request for a continuance of the six-month review hearing.

DISPOSITION

The order made at the six-month review hearing is affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ